

REMARKS

Claims 1 to 10 were pending in the application at the time of examination. Claims 4 to 6 stand rejected as directed to non-statutory subject matter. Claims 1 to 3 and 7 to 10 stand allowed.

Applicants thank the Examiner for allowing Claims 1 to 3 and 7 to 10.

In reviewing the claims, it was noted that a comma was inadvertently deleted in Claim 4. Accordingly, Claim 4 is amended to correct the grammatical error. Since the amendment corrects an informality, the amendment does not affect the patentability of Claim 4.

Claims 4 to 6 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The rejection stated in part "These claims merely recited software pe se . .

" and "the means of each limitation is directed to software by way of the specification."

Applicants respectfully traverse the § 101 rejection of Claim 4. Applicants respectfully submit that explicit claim limitations apparently have not been considered. Claim 4 recites:

4. An apparatus for managing remote software code update, the apparatus comprising:

means for receiving, by a processor, a message from an embedded device, said embedded device comprising a first code space comprising at least one segment and a second code space comprising one or more segments wherein said processor is included in a device different from said embedded device;

means for decoding, by said processor, said message to determine an execution mode of said embedded device;

means for indicating, by said processor, code in said first code space is corrupted if said execution mode indicates said embedded device is executing in said second code space; and

means for indicating, by said processor, said code in said first code space is valid if said execution mode indicates said embedded device is executing in said first code space

Applicants first note that each of the means is performed "by a processor." Software alone cannot receive a message. Software alone cannot decode the message. Software alone cannot indicate a code space is corrupted, and software alone cannot indicate code in the first code space is valid. Accordingly, to assert that Claim 4 is directed to software per se fails to consider the claim as a whole.

Rather, for example, a combination of software executing on a processor is needed to accomplish each means and this is exactly what is recited in Claim 4. In addition, not only the utility of the apparatus, but also the utility of each of the means is expressly recited in Claim 4.

Specifically, the preamble provides:

apparatus for managing remote software code update

Software alone does not have such a utility and so cannot read on the apparatus.

The utility of the means for receiving is "receiving a message from an embedded device." Again, software alone cannot perform this utility. This claim element makes it clear that the receiving is done by a processor and further specifically defines the processor.

The utility of the means for decoding the message is "to determine an execution mode of said embedded device." Again, software alone cannot decode anything. Rather the processor is explicitly recited as doing the decoding.

The utility of the means for indicating is for telling that the first code space is corrupted or is valid and again

this is done by the processor and not software alone as asserted in the rejection.

A simple reading of the explicit claim language demonstrates that the apparatus and each of the elements in the apparatus has a specific utility and cannot be software per se.

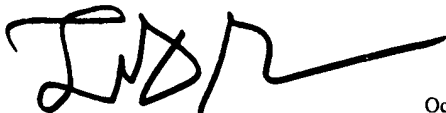
Therefore, Applicant respectfully submits that the § 101 rejection is not well founded. Applicants respectfully request reconsideration and withdrawal of the § 101 rejection of Claim 4.

Claims 5 and 6 depend from Claim 4 and so have utility for at least the same reasons as Claim 4. Applicants respectfully request reconsideration and withdrawal of the § 101 rejection of each of Claims 5 and 6.

Claims 1 to 10 remain in the application. Claim 4 has been amended. For the foregoing reasons, Applicant(s) respectfully request allowance of all pending claims. If the Examiner has any questions relating to the above, the Examiner is respectfully requested to telephone the undersigned Attorney for Applicant(s).

CERTIFICATE OF MAILING

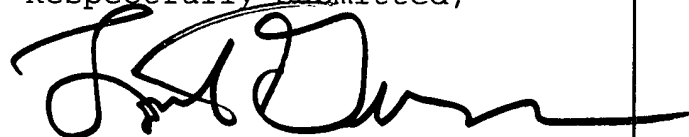
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on October 24, 2006.



Attorney for Applicant(s)

October 24, 2006
Date of Signature

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